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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 BANK OF AMERICA, N.A.,

8 Plaintiff,

9 v.

10 TIMOTHY D. ALGAIER; DEBRA
11 EDDY; JOHN AND/OR JANE DOE,
12 UNKNOWN OCCUPANTS/CO-
HABITANTS OF THE SUBJECT
PREMISES,

13 Defendants.
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NO. 2:19-CV-0181-TOR

ORDER REMANDING CASE TO
STATE COURT

15 BEFORE THE COURT are Defendants' Notice of Removal and Motion for
16 Stay (ECF No. 1) and Plaintiff Bank of America's Motion to Remand (ECF No. 2).
17 These matters were submitted for consideration without oral argument. The Court
18 has reviewed the record and files herein, and is fully informed. For the reasons
19 discussed below, Defendants' Motion (ECF No. 1) is **denied** and Plaintiff's
20 Motion (ECF No. 2) is **granted**.

DISCUSSION

A defendant may remove a civil action filed in state court to federal court so long as the district court could have exercised original jurisdiction over the matter and the notice of removal is timely filed. 28 U.S.C. § 1441(a); 28 U.S.C. § 1446(b). The removal statute is strictly construed against removal jurisdiction, and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citation omitted). Indeed, there is a “strong presumption” against removal jurisdiction, which “means that the defendant always has the burden of establishing that removal is proper.” *Id.* (citations omitted). Important to this case, “[f]ederal jurisdiction cannot be predicated on an actual or anticipated defense” or “an actual or anticipated counterclaim.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009). “An order remanding a case to the state court which was removed under [28 U.S.C. § 1441(b)] is not reviewable on appeal or otherwise.” *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1065 (9th Cir. 1979) (citing 28 U.S.C. § 1447(d)).

The Court finds removal was not proper; remand is thus necessary. In Defendants’ Notice of Removal, Defendants assert removal is proper because the Court has diversity jurisdiction and federal question jurisdiction. However, as Bank of America correctly notes, ECF No. 2 at 4: (1) Defendants do not have a right of removal under diversity jurisdiction because Plaintiff filed the suit in

1 Washington where Defendants reside, 28 U.S.C. § 1332 (removal under diversity
2 jurisdiction is not proper “if any of the parties in interest properly joined and
3 served as defendants is a citizen of the State in which such action is
4 brought.”); and (2) Defendants do not have a right of removal under federal
5 question jurisdiction because Bank of America’s Complaint¹ in the underlying
6 action is based wholly on state law and the Defendants cannot manufacture federal
7 jurisdiction by asserting defenses or counterclaims implicating federal law, as they
8 attempt to do here, *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535
9 U.S. 826, 830 (2002) (under the “well-pleaded-complaint rule”, the Court only
10 looks to the plaintiff’s complaint, not the defendant’s defenses or counterclaims, in
11 determining whether the Court has federal question jurisdiction).²

12 Finding the case was improperly removed to this Court, the request for an
13 injunction must be **denied**.

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16 ¹ See ECF No. 1 at 13- 23.

17 ² Notably, Plaintiff’s claim for federal question jurisdiction arises out of the
18 state court’s alleged wrongful action: accepting a declaration not based on personal
19 knowledge. This is not a federal question, but rather something the state court can
20 address.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendants' Motion for Stay (ECF No. 1) is **DENIED**.

3 2. Plaintiff Bank of America's Motion to Remand (ECF No. 2) is
4 **GRANTED**.

5 3. This case is hereby **REMANDED** to the Spokane County Superior Court
6 for all further proceedings (former Spokane County Superior Court No.
7 19201839-32).

8 The District Court Executive is directed to enter this Order, furnish copies to
9 the parties, mail a certified copy to the Clerk of the Spokane County Superior
10 Court, and CLOSE the file.

11 **DATED** July 19, 2019.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge